

Attorney for Plaintiffs

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N. MIYATA  
CLERK

## STATE OF HAWAII

18 - 1-1897 - 11

W.C.

vs.

Defendants.

) Civ. No. \_\_\_\_\_  
 ) (Other Non-Vehicle Tort)  
 )  
 )  
 ) COMPLAINT; DEMAND FOR  
 ) JURY TRIAL; SUMMONS  
 )  
 )  
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I do hereby certify that this is a full, true and correct copy of the original on file in this office.

Clerk, Circuit Court, First Circuit

Complaint, MIYAGI was the Administrator of the State Emergency Management Agency of the State of Hawaii ("HI-EMA"), a division of the STATE's Department of Defense.

4. Defendants EMPLOYEES 1-10 are employees of the State of Hawaii, who acted in a grossly negligent manner at HI-EMA in issuing the false missile alert described below thereby causing damages to Plaintiffs as alleged below. These Defendants are jointly and severally liable with all other Defendants in this case for the damages suffered by Plaintiffs as a result of the issuance of the false missile alert as alleged below. Plaintiffs are aware, based on reports prepared about the false missile alert as described below, that employees of the State of Hawaii working at HI-EMA were involved in the issuance of the false missile alert as alleged below, but these employees are only identified by number and not by name, and despite diligent and good faith efforts on the part of Plaintiffs, Plaintiffs have been unable to identify these Defendants. When Plaintiffs have identified these Defendants, Plaintiffs will join the Defendants in this case by name pursuant to the provisions of Rule 17(d) of the Hawaii Rules of Civil Procedure.

5. Defendants JOHN DOES 1-10 are persons not presently known to Plaintiffs who were responsible in whole or in part for the issuance of the false missile alert described below which caused damages to Plaintiffs as alleged below. These Defendant are jointly and severally liable with all other Defendants in this case for the damages suffered by Plaintiffs as a result of the issuance of the false missile alert as alleged below. When Plaintiffs have identified these Defendants, Plaintiffs will join the Defendants in this case by name pursuant to the provisions of Rule 17(d) of the Hawaii Rules of Civil Procedure.

6. Defendants DOE ENTITIES 1-10 are persons acting in a business capacity or business entities responsible in whole or in part for the issuance of the false missile alert described below which caused damages to Plaintiffs as alleged below. These Defendants are jointly and severally liable with all other Defendants in this case for the damages suffered by Plaintiffs as a result of the issuance of the false missile alert as alleged below. When Plaintiffs have identified these Defendants, Plaintiffs will join the Defendants in this case by name pursuant to the provisions of Rule 17(d) of the Hawaii Rules of Civil Procedure..

7. On January 13, 2018, Plaintiffs were boyfriend and girlfriend who lived in REICHEL's townhouse in the Hawaii Kai area and had been living together for several years in a committed and loving relationship.

8. On January 13, 2018, at about 8:00 a.m., Plaintiffs were driving from REICHEL's

townhouse in Hawaii Kai toward the Sandy Beach area on the island of Oahu. Plaintiffs often drove to the Sandy Beach area to enjoy early Saturday morning time at the beach together.

9. On January 13, 2018, at about 8:07 a.m., both Plaintiffs received a message on their respective cell phones which stated, "BALLISTIC MISSILE THREAT INBOUND TO HAWAII. SEEK IMMEDIATE SHELTER. THIS IS NOT A DRILL." This message was initiated from HI-EMA. The message constituted a "real world alert code" (a true message) sent out as a civil emergency message ("CEM") over the Emergency Alert System/Wireless Emergency Alert ("EAS/WEA"). This means that the message was sent out through all participating cell phone wireless providers in the State of Hawaii to all Hawaii citizens with cell phones associated with the participating providers, which is the reason Plaintiffs received the message on their cell phones.

10. Both Plaintiffs believed this message to be true and were extremely frightened and thought they were shortly going to die. They decided that there was not much they could do to protect themselves from this threat and decided that if they were going to die, they might as well die together on the beach.

11. While Plaintiffs were proceeding to the beach, REICHEL received a call from her son who is in the Hawaii Army National Guard and who was on duty at the time. He told his mother that the threat was real and asked Plaintiffs what they were doing to seek shelter. Because REICHEL received this call from a trusted and close family member who was also a member of the armed forces, who Plaintiffs presumed would know whether the threat was real or not, the threat was made all the more real to Plaintiffs.

12. Plaintiffs reached the beach around 8:10-8:15 a.m. As Plaintiffs were driving to the beach, and after arriving at the beach, Plaintiffs were calling their loved ones on their cell phones letting their loved ones know that they loved them. SHIELDS called his son and daughter on the mainland.

13. Shortly after calling his son and daughter, SHIELDS began to feel a severe and painful burning in his chest area. He did not know what the problem was and at first tried cooling down by entering the water. This did not help, and SHIELDS only thought at that point was to get to the close-by Straub community medical center in Hawaii Kai.

14. Plaintiffs arrived at the Straub community medical center in Hawaii Kai at about 9:28 a.m. Unbeknownst to Plaintiffs, at about 8:45 a.m., HI-EMA had issued a CEM false alert message as a WEA sent to all cell phones which stated, "False alert. There is no missile threat or danger to

the State of Hawaii.” At about 8:45 a.m., Plaintiffs were already dealing with SHIELDS’ health problem and were not alerted to the false alert message on their cell phones.

15. Within minutes of arriving at Straub, SHIELDS suffered a cardiac arrest, and CPR was started by a Straub doctor while 911 was called for paramedics. The CPR saved SHIELDS’ life, but after paramedics arrived and SHIELDS was intubated, he suffered from an attack of ventricular fibrillation, and he had to be defibrillated by the paramedics, again saving his life.

16. SHIELDS was taken from the Straub Hawaii Kai community facility to Straub Hospital where it was determined that SHIELDS had suffered from an “acute anterior wall, ST-segment elevation, myocardial infarction” (in other words, a heart attack). Emergency surgery was performed, again saving SHIELDS’ life.

17. Since suffering from the heart attack, damage to SHIELDS’ heart has been confirmed by several tests.

18. Dr. John S. MacGregor, a board certified medical doctor in cardiovascular disease and interventional cardiology who is also a professor of medicine at San Francisco School of Medicine, and Director of the Cardiac Catheterization Laboratory and Interventional Cardiology at San Francisco General Hospital, and a practicing attending physician at the Department of Internal Medicine (Cardiology Division) at the University of California, San Francisco Medical Center, has advised Plaintiffs as follows:

In my opinion, the warning there was an imminent missile attack about to hit Hawaii was a substantial contributing factor in causing the heart attack and cardiac arrest experienced by James Shields on January 13, 2018. Prior to that time, Mr. Shields had no known cardiac disease. Within about 15 minutes of learning of the impending missile attack, Mr. Shields had developed symptoms of an acute myocardial infarction. Shortly after that, he experienced a cardiac arrest.

Dr. MacGregor goes on in his report to Plaintiffs to state that “literature supports the finding that acute mental stress can trigger myocardial ischemia, myocardial infarction, and cardiac arrest.” In particular, Dr. MacGregor cites to a study published in *Lancet* in 1991 which “found that in the first days of Iraqi missile attacks on Israel during the Gulf War there was a ‘sharp rise in incidence of acute myocardial infarction and sudden death’ compared to other periods of time.” Other articles in “the literature” to which Dr. MacGregor has referred Plaintiffs are: Chapter 84 entitled “Psychiatric and Behavioral Aspects of Cardiovascular Disease” of Braunwald’s book “Heart Disease: A Textbook of Cardiovascular Medicine” (“[T]he incidence of cardiovascular events rises immediately . . . among civilians subjected to military attack.”), and the October 2016 Interheart

Study entitled “Physical Activity and Anger or Emotional Upset as Triggers of Acute Myocardial Infarction” by Smyth, et al. (“In these analyses of INTERHEART [capitalization in the original], we confirm previous reports that . . . emotional upset may act as triggers of first acute myocardial infarction . . .”)

19. Based on the opinion of Dr. MacGregor, the false missile alert was a substantial factor which contributed to SHIELDS’ suffering from a heart attack and subsequent damages related to the heart attack.

20. SHIELDS has suffered general and special damages which will be shown at the time of trial for which Defendants are liable for issuing the false missile alert and failing to cancel it in a timely manner which was a substantial factor in causing SHIELDS’ heart attack as alleged above.

21. REICHEL was present with SHIELDS the entire time during which the two of them heard the warning about the missile attack and entire time during which SHIELDS suffered from his heart attack, went to Straub’s Hawaii Kai clinic, and went to Straub Hospital.

22. REICHEL suffered emotional upset observing her boyfriend suffer from a heart attack and almost die on several occasions.

23. REICHEL has suffered general and special damages which will be shown at the time of trial for which Defendants are liable for issuing the false missile alert and failing to cancel it in a timely manner which was a substantial factor in causing SHIELDS’ heart attack and thereby causing REICHEL’s detrimental response and emotional upset to SHIELDS’ heart attack.

24. Hawaii Revised Statutes (HRS), Chapter 662 entitled “State Tort Liability Act” provides in HRS 662-2, “The State [of Hawaii] hereby waives its immunity for liability for the torts of its employees and shall be liable in the same manner and to the same extent as a private individual under like circumstances . . . .” Under this provision, the STATE and its employees would normally be liable for negligent operation of HI-EMA and issuance of a false missile attack warning which caused damage to persons. With respect to HI-EMA, HRS 662-2 must be read *in para materia* with HRS Chapter 127A, which created and applies to HI-EMA, and in particular with HRS 127A-9 which provides for certain immunities for persons and entities involved with the operation or support of HI-EMA. HRS 127A-9 provides:

Immunities; rights.

(a) None of the following: (1) the State; (2) any county; (3) any owner or operator of a public utility or critical infrastructure facility; (4) private-sector or nonprofit organization; or (5) except in cases of wilful misconduct, gross negligence, or

recklessness, persons engaged in emergency management functions pursuant to this chapter, including volunteers whose services are accepted by any authorized person, shall be civilly liable for the death of or injury to persons, or property damage, as a result of any act or omission in the course of the employment or duties under this chapter.

Taken together, HRS 662-2 and HRS 172A-9 require that Plaintiffs prove by a preponderance of the evidence that employees of the STATE acted at least with gross negligence in order to establish that the STATE and these employees are liable to Plaintiffs for damages in connection with the false missile attack as alleged above.

25. Two reports were prepared regarding the issuance of the false missile alert. On January 15, 2018, Major General Arthur J. Logan, Director of HI-EMA, assigned Brigadier General [Ret] Bruce E. Oliveira ("Oliveira") to investigate the false missile alert. On January 29, 2018, Oliveira issued his report entitled "False Ballistic Missile Alert Investigation for January 13, 2018." The Public Safety and Homeland Security Bureau of the Federal Communications Commission ("FCC") also issued a report in April 2018 entitled "Report and Recommendations: Hawaii Emergency Management Agency January 13, 2018 False Alert." Taken together, the findings of these two reports identify acts of employees of the STATE, acting within the scope of their employment at HI-EMA, which establish that these employees acted with gross negligence in the operation of HI-EMA in issuing the false missile alert and in delaying in issuing an "all clear" message. These acts of gross negligence were substantial factors in causing the damages alleged above to Plaintiffs which resulted from the issuance of the false missile alert.

26. The following systemic gross negligence at HI-EMA laid the groundwork for the false missile alert which occurred on January 13, 2018, and the delay in issuing an "all clear" message [all EMPLOYEE numbers used in this summary are the EMPLOYEE numbers used in the Oliveira report]. During this entire period of time, MIYAGI was the Administrator of HI-EMA and responsible for the systemic grossly negligent operation of HI-EMA.

(a) The AlertSense computer program which operates the missile warning system replaced an older program in mid-December 2017, no technical training was provided by management at HI-EMA to employees working at the State Warning Point ("SWP"), and SWP personnel advised Oliveira they "felt this training was inadequate." The SWP is the operations center of HI-EMA which is directly responsible for missile alert warnings and is located in Diamond Head and operates 24 hours per day, 7 days per week.

(b) When SWP practices a ballistic missile alert ("BMA") it operates from a 20 step SWP Ballistic Missile Quick Response Checklist, but this Checklist does not



include a response protocol in the event of a false-ballistic missile message even though the HI-EMA "Preparedness Branch previously identified the need to refine and reformat the SWP BMA checklist to include a 'Deactivation' section or 'All Clear' EAS message." Oliveira's report concluded, "Had the protocol been developed within the last 2 months, the delay in sending out an official notification over WEA/EAS that the alert was false would not have happened on January 13, 2018."

(c) Although there are three shifts per day at SWP, not all shifts participated in the Homeland Security Exercise and Evaluation Program required by the FCC to evaluate competence in operating the EAS/WEA systems. The shifts were conducting their own drills separately from the FCC exercise program with exercise control protocols.

(d) Many questions on policies and procedures regarding the BMA Checklist have previously been asked by SWP personnel and HI-EMA personnel outside of SWP without answers, resulting in confusion and frustration.

(e) Oliveira concluded, "SWP Supervisors do not consistently ensure employee performance levels meet expectations," and "Poor performance evaluations have been documented on select SWP individuals. This has created morale and competency issues." Specifically, "EMPLOYEE 1 has been a source of concern for the same SWP staff for over 10 years. EMPLOYEE 1's poor performance has been counseled and documented and the SWP members have stated that they are 'not comfortable with EMPLOYEE 1 as a supervisor, two-man team, or as a part of the SWP in general. He is [sic] does not take initiative and has to be directed before he takes action. He is unable to comprehend the situation at hand and has confused real life events and drills on at least two separate occasions."

(f) SWP management conducted drills excessively (6 drills in the 8 days leading up to the false alert). The FCC report concluded, "While frequent preparedness exercises may facilitate proficiency, the frequency with which HI-EMA was sending test messages during this period, together with the shortcomings otherwise identified in this report, made it more likely that a false alert could occur."

(g) "No notice" drills were used on a regular basis at SWP instead of scheduling practice drills.

(h) HI-EMA allowed BMA's to be issued by a single warning officer instead of requiring confirmation by a second warning officer.

(i) Although the SWP AlertSense computer program had a "cancel message" if a false alert was sent out, this cancel message is not sent to the public in general so the original message received by the public is not canceled without the sending of a new CEM.

(j) HI-EMA's protocol for drafting a BMA for a drill allowed for the use of actual ballistic alert message language such as "real world," although the drill message always began with and ended with "exercise, exercise, exercise." The FCC report concluded, "Use of the same language for both test and live alert initiation procedures could cause confusion among warning officers who received the message without prior notice, notwithstanding the statements at the beginning and end of the message that it was an exercise."

27. With the above-outlined systemic gross negligence in place, the following actions taken

by STATE employees constituted gross negligence causing the issuance of the false missile alert:

(a) The midnight supervisor at SWP, EMPLOYEE 4, decided to conduct a drill during the shift change from the midnight shift to the day shift. The FCC report states, about EMPLOYEE 4's decision to conduct a drill at shift change, "The midnight supervisor specifically decided to drill at shift change, reasoning that it would be most difficult for warning officers to properly respond to a call from PACOM announcing an incoming ballistic missile during a shift change. Drilling at shift change is not standard procedure for HI-EMA." EMPLOYEE 4 gave only a few minutes notice of the decision to conduct a drill to the day shift supervisor, but EMPLOYEE 4 did not make it clear to the day shift supervisor that EMPLOYEE 4 intended to run the drill with day shift employees and not midnight shift employees. Normally, there is a 45 minute overlap at shift change, so midnight and day shift employees would be present at the same time at shift change. Because EMPLOYEE 4 was not clear with the day shift supervisor, the day shift supervisor was not present at SWP to supervise the drill. No supervisor was present during the drill because EMPLOYEE 4 was outside of SWP calling in to SWP to simulate a call from United States Pacific Command (PACOM) which is the source of any missile alert given to SWP.

(b) When EMPLOYEE 4 called in to SWP, the day shift warning officer receiving the call was not notified in advance that a drill was being conducted.

(c) In drafting the PACOM message, EMPLOYEE 4 used the words "real world," but he did draft the message with the words "exercise, exercise, exercise" at the beginning and end of the message. In violation of language to be used for drill procedure, EMPLOYEE 4 added to his PACOM message already containing the words "real world" the following sentence, "This is not a drill."

(d) EMPLOYEE 1, the warning officer sitting at the computer console, whose job it was to issue a CEM, has advised investigators that he did not hear the words "exercise, exercise, exercise" at the beginning or end of the PACOM message that was broadcast over speakers at SWP. EMPLOYEE 1 told investigators that he did hear the words, "This is not a drill," and further told investigators that, based on the use of these words, he believed that there was a real world missile attack taking place. EMPLOYEE 1 told investigators that when he sent out the BMA, he did not make a mistake and intended to send the message based on his belief that a real attack was taking place.

28. Based on the systemic gross negligence outlined above and the gross negligence in issuing the BMA, the following actions taken by STATE employees constituted gross negligence in failing to cancel the BMA over the EAS/WEA system to public cell phones for 38 minutes:

(a) Although there was a "cancel message" on EMPLOYEE 1's computer screen by which he could cancel the false missile alert, EMPLOYEE 1 just "sat there" when told by another employee to send the cancel message. It took about 5 minutes before another employee took over EMPLOYEE 1's computer mouse to send out the cancel message. This cancel message is not sent to the public in general. The delay in issuing the cancel message in turn caused delay in sending out the final WEA message to public cell phones more than one-half hour later.



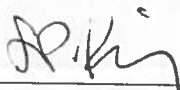
(b) Delay was caused, as noted above, because HI-EMA did not have a protocol for canceling a false alert message even though HI-EMA's Preparedness Branch had previously noted that such a protocol was needed.

(c) Delay was caused in sending the final WEA message to public cell phones by SWP's mistaken belief that it needed to contact the Federal Emergency Management Agency ("FEMA") before sending out a WEA to the public. Specifically, Oliveira states in his report, "HI-EMA mistakenly believed that it had to consult with FEMA to issue an event code which contributed to the 38 minutes to issue an official notification that the threat was false. HI-EMA has corrected this concern and understands that it is the HI-EMA's authority to issue an official notification." At 8:26 a.m. on January 13, 2018, SWP EMPLOYEE 6 attempted to contact FEMA with no answer. At 8:27 a.m., EMPLOYEE 6 called EMPLOYEE 11 to discuss options. They decided on the issuance of another CEM. At 8:32 a.m., EMPLOYEE 6 remotely logged in to the WEA/EAS system via an encrypted connection, and a CEM message was drafted and sent. At 8:45 a.m., the CEM message was "posted" (meaning sent out to the general public cell phones). The WEA message sent to cell phones stated, "False Alert. There is no missile threat or danger to the State of Hawaii."

29. Based upon the foregoing summary of grossly negligent conduct by MIYAGI and STATE employees in issuing the false missile alert and in delaying to issue an "all clear" message, the STATE, MIYAGI, and all Defendants are responsible, jointly and severally, for the damages alleged above which were caused to Plaintiffs.

WHEREFORE, Plaintiffs pray for a judgment against all Defendants, jointly and severally, for special and general damages in amounts to be shown at the time of trial, and for such other and further relief as the court deems just and appropriate.

DATED: Honolulu, Hawaii, November 27, 2018.

  
\_\_\_\_\_  
SAMUEL P. KING, JR.  
Attorney for Plaintiffs

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

18 - 1-1897 - 11

JAMES SEAN SHIELDS and BRENDA REICHEL,

) Civ. No. \_\_\_\_\_

) (Other Non-Vehicle Tort)

Plaintiffs,

)

)

) DEMAND FOR JURY TRIAL

VS.

)

)

VERN T. MIYAGI; EMPLOYEES NOS. 1-10; )  
JOHN DOES 1-10; DOE ENTITIES 1-10, )

)

)

Defendants.

)

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### DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury on all issues triable by a jury in this case.

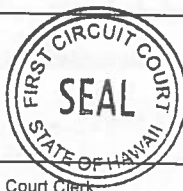
DATED: Honolulu, Hawaii, November 27, 2018.

DPN

SAMUEL P. KING, JR.

Attorney for Plaintiffs

<b>STATE OF HAWAII</b> CIRCUIT COURT OF THE FIRST CIRCUIT	<b>SUMMONS</b> TO ANSWER CIVIL COMPLAINT	CASE NUMBER CIV No. <b>18 - 1 - 1897 - 11</b>
PLAINTIFF, JAMES SEAN SHIELDS and BRENDA REICHEL	VS.	DEFENDANT. STATE OF HAWAII; VERN T. MIYAGI; EMPLOYEES NOS. 1-10; JOHN DOES 1-10; and DOE ENTITIES 1-10
PLAINTIFF'S ADDRESS (NAME, ADDRESS, TEL. NO.) Samuel P. King, Jr. 1396 735 Bishop Street, Suite 304 Honolulu, HI 96813 Tel. No. 808-521-6937 Attorney for Plaintiffs		
<p><b>TO THE ABOVE-NAMED DEFENDANT(S)</b></p> <p>You are hereby summoned and required to file with the court and serve upon  <u>Samuel P. King, Jr.</u>          plaintiff's attorney, whose address is stated above, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the date of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.</p> <p style="text-align: center;"><b>THIS SUMMONS SHALL NOT BE PERSONALLY DELIVERED BETWEEN 10:00 P.M. AND 6:00 A.M. ON PREMISES NOT OPEN TO THE GENERAL PUBLIC, UNLESS A JUDGE OF THE ABOVE-ENTITLED COURT PERMITS, IN WRITING ON THIS SUMMONS, PERSONAL DELIVERY DURING THOSE HOURS.</b></p> <p style="text-align: center;"><b>A FAILURE TO OBEY THIS SUMMONS MAY RESULT IN AN ENTRY OF DEFAULT AND DEFAULT JUDGMENT AGAINST THE DISOBEYING PERSON OR PARTY.</b></p>		
DATE ISSUED  <b>NOV 27 2018</b>	CLERK  N. MIYATA	
I do hereby certify that this is full, true, and correct copy of the original on file in this office		Circuit Court Clerk



In accordance with the Americans with Disabilities Act, and other applicable state and federal laws, if you require a reasonable accommodation for a disability, please contact the ADA Coordinator at the First Circuit Court Administration Office at PHONE NO. 539-4333, FAX 539-4853 or TTY 539-4322, at least ten (10) working days prior to your hearing or appointment date.